

PARENT CONNECTIONS NEWSLETTER

In this edition:

- Five characteristics of Home and Community-Based (HCBS) Settings per the Settings Rule
- How to modify Settings Rule requirements
- What Heightened Scrutiny Is
- What families can do



CENTER for PERSONS with
DISABILITIES
Utah State University.



Utah Parent Center
Special needs, extraordinary potential

Why am I receiving this newsletter?

If your family member is on the Division of Services for People with Disabilities (DSPD) waitlist or currently receiving services, you want to be able to support them in living their best life possible. Individuals receiving services from the DSPD may receive them in a day program. This newsletter will focus on what characteristics a setting must have according to the Settings Rule. Stay tuned! Another newsletter will follow with information on the Settings Rule in residential services.

The Settings Rule and Day Supports

The Centers for Medicare and Medicaid Services (CMS) enacted the Home and Community-Based Services (HCBS) Settings Rule in 2014. The Settings Rule ensures individual choice and community integration of people with disabilities. States have until March of 2022 to ensure all providers who serve individuals receiving Medicaid waivers, which are waivers administered by the [Division of Services for People with Disabilities](#) (DSPD) and paid for by Medicaid, to be compliant with the Settings Rule. The Settings Rule states that there are certain characteristics of a setting which indicate it is in compliance. There are five characteristics of day support settings that individuals and families should look for. Day supports are typically provided to people with disabilities on Medicaid waivers who have exited the school system and are not working full-time and may include respite care and supported living services.

Characteristic #1: The setting is integrated in and supports full access to the greater community.

Individuals in the setting should be free to move around and come and go as they please, and visitors should be welcome any time.

To facilitate access to the greater community, the setting should be located near residential and business services and individuals should have access to information and training on the use of public transportation. The setting should also share information about community events and provide access to the community, not just bring community services to the setting, i.e. a barber that comes in and gives haircuts once a month is not considered community access. Employment opportunities should be facilitated and supported and schedules modified as needed for individuals who work or volunteer, and individuals should be able to control their personal funds.

Characteristic #2: The setting is selected by the individual from among setting options, the options are identified and documented and reflect the individual's needs and preferences.

The setting should be one chosen by the individual, and the individual should be given a choice of settings, where possible. If there is only one provider near the individual and the individual wants to stay near their home, that is a valid choice; they do not need to research additional settings outside their area. Individuals should know how to request a change in services or settings.

Characteristic #3: The setting ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.

This means that an individual's information is kept private. It is not posted anywhere or spoken about by staff in the presence of others. Staff communication and interaction with individuals should be respectful and in a form the individual understands.

The setting should provide a secure place to store personal belongings, and personal assistance should only be provided if desired by the individual, and in private.

Individuals should know how to make complaints if they feel their rights are not being respected and should be able to make complaints without fear of the consequences.

Characteristic #4: The setting optimizes but does not regiment individual initiative, autonomy, and independence in making life choices, including daily activities, physical environment, and with whom to interact.

The setting should not have locks, gates, fences or other barriers preventing entrance or exit from the setting. The setting should provide a variety of gathering spaces – large, small, group, solitary, indoor and outdoor – and a variety of activities and tasks, including stimulating and calming. Individuals should have input into their daily schedule and schedules should be individualized, focusing on interests and desires. Individuals should have a choice of whether or not to participate in activities, where and with whom to do them. The activities and tasks should be matched to the skills, abilities, and desires of individuals who receive services in the setting.

The setting should inform individuals of their rights and allow them to engage in age-appropriate legal activities if desired.

The setting should provide a dining area with an opportunity to converse with others, and offer alternative or private dining if requested. Individuals should have access to food at times they choose, and be able to choose where and with whom to sit.

Characteristic #5: The setting facilitates individual choice regarding services and supports, and who provides them.

The setting should not restrict services, providers or supports available to the individual.

The setting should help the individual develop plans that support his or her needs and preferences. The staff should know the individual's capabilities, interests, preferences, and needs, and support individuals to make decisions and exercise autonomy to the fullest extent possible. Individuals should have the opportunity to change or update their preferences at any time and should be informed as to how to make such requests.

Modifications

Modifications to any of the characteristics are allowed on an individual basis, and only after completing the steps outlined in <https://dspd.utah.gov/settings-rule/>. The modification or restriction should apply only to the individual for whom it was written. For example, an individual may have a restriction that he cannot leave the setting without supervision. That restriction would only apply to him, and not to the other participants in the program; they would be allowed to leave without staff.

Heightened Scrutiny

Settings must be compliant with the HCBS Settings Rule by March 17, 2022, in order to continue serving individuals on HCBS Waivers. The Centers for Medicare and Medicaid Services (CMS) is the federal agency responsible for making the final determination whether a setting has the characteristics of an institution. The types of settings that are considered isolating are:

- Settings located in a building that provides inpatient institutional treatment;
- Settings located on the grounds of, or immediately adjacent to, a public institution;
- Any other settings that have the effect of isolating individuals from the broader community.
 - ⇒ Does the design or model of service provision in the setting limit opportunities for interaction in and with the broader community?
 - ⇒ Does the setting restrict individual choice to receive services or to engage in activities outside the setting?
 - ⇒ Is the setting located separate and apart from the broader community without providing individuals the opportunity to access the community and participate in community services?

All settings have been reviewed individually by the Utah Department of Health to determine if they meet any of these factors and require heightened scrutiny. If a setting has institutional characteristics but is able to overcome them by **July 1, 2020**, that setting will not have to undergo heightened scrutiny. If not, these settings will have to provide documentation to CMS of how they do, in fact, provide community integration and individual choice. According to the [State Transition Plan \(http://health.utah.gov/ltc/hcbstransition/Documents.html\)](http://health.utah.gov/ltc/hcbstransition/Documents.html), the public will also have the opportunity to comment on any setting requiring heightened scrutiny.

What Can Families Do?

The best way to stay informed on the Settings Rule is to sign up for the email list (listserv): <https://medicaid.utah.gov/medicaid-long-term-care-and-waiver-programs/>. The sign up is at the bottom of the webpage.

You can provide public comment at the appropriate time if a setting your loved one has received services at is undergoing heightened scrutiny. Those on the email list (listserv) mentioned previously will be informed of the request for public comments. You can access more information on public comments at <http://health.utah.gov/ltc/hcbstransition/PublicComments.html>.

You can provide feedback on settings at any time by sending an email to HCBSsettings@utah.gov. If you would like to submit feedback or concerns anonymously, you can do so at the HCBS website, <http://health.utah.gov/ltc/hcbstransition/>.

If you have any questions about the Settings Rule and what it means for you or your loved one, you can contact any of the following:

- Your provider or prospective provider
- Your support coordinator
- Amy Huppi, Program Administrator: Settings Rule, Documents and Compliance, Division of Services for People with Disabilities – 801-538-4154, amyhuppi@utah.gov
- Heather Mossinger, Quality Assurance Specialist, Utah Department of Health, 801-538-6613, hmossing@utah.gov
- Aubrey Snyder, HCBS Integration Specialist, Utah State University-Center for Persons with Disabilities, 435-797-0528, Aubrey.Snyder@usu.edu
- Lisa Wade, Person-Centered Support Plan Consultant, Utah Parent Center, 801-272-1051, lisa@utahparentcenter.org

Remember, the Settings Rule and the changes it may inspire do not mean your son or daughter will have to start working full-time or be out in the community every minute of their day. It does not necessarily mean that the setting where they have been receiving services will have to close their doors so your son or daughter will have nowhere to go and nothing to do. It does mean your loved ones will have choices about how they spend their time, who they spend it with and what their day looks like as we embrace and incorporate the Settings Rule changes into Utah's service system including day supports.